

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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LORRAINE PADRO, et al.,

Plaintiffs,

-against-

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

**MEMORANDUM
AND ORDER**

11-CV-1788 (CBA)

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ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:

The parties have jointly filed a proposed motion schedule pursuant to which defendant's motion to dismiss and plaintiffs' motion for expedited discovery would "be heard contemporaneously" Letter from Jim Walden to the Court (Aug. 10, 2011) at 1, ECF Docket Entry ("DE") #13. However, it is apparent from Judge Amon's Minute Entry docketed on August 3, 2011, that she did not contemplate that the two motions would be briefed together. Rather, plaintiff's motion for expedited discovery was to be "raise[d] with" the undersigned magistrate judge, whereas the defendants would proceed with their dispositive motion before the District Court -- albeit on an agreed-upon schedule subject to this Court's approval. See 8/3/11 Minute Entry. That the two motions were not intended to be briefed pursuant to a single schedule is further evidenced by plaintiffs' response to defendant's request for a premotion conference in connection with the latter's anticipated dispositive motion: plaintiffs expressly argued that "the proposed motion [to dismiss] should not be allowed to delay critical discovery going to the merits of this case." Response to Motion for Pre Motion

Conference (July 28, 2011), at 1-2, DE #12 (citing case denying defendants' motion to stay discovery during the pendency of dismissal motion). Therefore, it would be illogical to set a schedule that directly ties the motion for expedited discovery to the dismissal motion.

Accordingly, while the Court is prepared to adopt the parties' proposed schedule for briefing defendant's motion to dismiss,¹ a separate, tighter schedule will be set for the parties to address plaintiffs' request for expedited discovery. The parties are reminded that before presenting any discovery dispute to the Court, they are required to confer in good faith in an attempt to resolve or at least narrow that dispute. See Fed. R. Civ. P. 37(a)(1); SDNY/EDNY Local Civ. R. 37.3(a). To the extent that the parties are unable to resolve completely the issue of expedited discovery, they shall present their positions in letter-briefs pursuant to the following schedule: plaintiffs' submission shall be filed by September 1, 2011; defendant's

¹ More specifically:

- Defendant's motion to dismiss is due on or before August 25, 2011.
- Plaintiffs' brief in opposition to defendant's motion to dismiss is due on or before October 3, 2011.
- Defendant's reply in further support of motion to dismiss is due October 31, 2011.
- Plaintiffs' reply in further support of motion for expedited discovery is due on or before November 21, 2011.

Pursuant to Judge Amon's Individual Rules, "[t]he Court will notify the parties to set the specific date and time for oral argument." Rule 3(E), Individual Motion Practices and Rules of Judge Carol Bagley Amon.

opposition submission shall be filed by September 8, 2011; plaintiffs' reply is due by September 12, 2011.

SO ORDERED.

**Dated: Brooklyn, New York
August 16, 2011**

**ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE**